

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

UNIVERSITAS EDUCATION, LLC,)	
)	
Petitioner/Judgment Creditor,)	
)	
v.)	
)	
AVON CAPITAL, LLC,)	
)	
Respondent/Judgment Debtor,)	
)	
ASSET SERVICING GROUP, LLC,)	Case No. 14-FJ-05-HE
)	
Respondent/Garnishee,)	
)	
SDM HOLDINGS, LLC,)	
)	
Respondent/Garnishee,)	
and)	
)	
AVON CAPITAL, LLC, a Wyoming)	
Limited Liability Company,)	
)	
Intervenor.)	

JOINT STATUS REPORT

In accordance with the Order of this Court entered on October 30, 2017 [Dkt. No. 95], Plaintiff, Universitas Education, LLC (“Plaintiff”), and intervenor, Avon Capital, LLC, a Wyoming Limited Liability Company (“Avon Capital-WY”) hereby submit the following Joint Status Report:

PROCEDURAL BACKGROUND

1. This action arises out the domestication of a judgment entered in New York against “Avon Capital, LLC” jointly and severally with other named defendants, in the

principal sum of \$110,737,073.73. *See* Judgment (the “Judgment”)[Dkt. No. 1]. This action is a collection action to recover pursuant to the Judgment.

2. On November 12, 2015, Plaintiff moved for, and this Court subsequently entered its Order Granting Motion for Order Requiring Judgment Debtor to Appear and Answer Concerning Property and Asset and For Injunction Forbidding Transfer or Other Disposition of Property (the “Judgment Debtor’s Examination”) [Dkt. No. 14; amended at Dkt. No 15; continued at Dkt. No. 29] (collectively, the “Orders”). Pursuant to the Orders, Judgment Debtor was required to produce documents and records detailing its assets and financial history, and to appear before this Court for examination concerning its property and assets on March 24, 2016 at 10:00 a.m. *See* Order Granting Defendant’s Unopposed Motion to Continue Judgment Examination [Dkt. No. 29](the “Motion to Continue”).

3. Judgment Debtor failed to produce the requested documents and failed to appear at the Debtor Examination scheduled before this Court on March 24, 2016.

4. Additionally, Plaintiff issued and served the Amended Subpoena, directing SDM to appear and answer as well as produce documents concerning the property, income, or liabilities of Judgment Debtor on March 24, 2016 at 9:00am at the offices of undersigned counsel. *See* Amended Subpoena attached as Exhibit 1 to the Motion for Contempt [Dkt. No. 40].

5. SDM failed to produce the requested documents and failed to appear at the scheduled time and location set forth in the Amended Subpoena.

6. Universitas filed its Motion for Contempt on March 31, 2016 [Dkt. No. 40].

7. The Court entered its Amended Order for Judgment Debtor and SDM Holdings, LLC to Appear and Show Cause setting this matter for hearing (the “Show Cause Hearing”). [Dkt. No. 42].

8. On April 15, Avon Capital-WY filed its Motion to Intervene. [Dkt. No. 42].

9. As a result of the filing of the Motion to Intervene, this Court struck the Show Cause Hearing to be reset.

10. After of the completion of briefing and the issuance of a Report and Recommendation by Magistrate Judge Mitchell, on September 13, 2017, Judge Heaton issued his Order denying the permanent injunction, allowing intervention, and leaving the contempt and remaining collection issues before Magistrate Judge Mitchell for further proceedings.

11. On October 30, 2017, this Court entered its Order requesting the Parties file a joint status report regarding the status of the contempt issues and status of collections.

STATUS

I. Universitas Education, LLC’s Position

12. Counsel for Plaintiff anticipates filing a motion to reset the Show Cause Hearing as to SDM Holdings, LLC and/or Judgment Debtor and to also file a motion resetting the Judgment Debtor’s Examination. The Judgment Debtor examination is necessary to facilitate Plaintiff’s collection of the Judgment.

13. Counsel for Plaintiff will submit any such motion within 14 days of the filing of this Status Report.

14. Counsel for Avon Capital-WY has reviewed this Joint Status Report and reserves all rights to respond to such Motions in accordance with applicable rules.

II. Avon Capital-WY's Position

15. On June 6, 2006, Avon Capital, LLC, a Nevada limited liability company ("Avon Capital-NV") filed articles of organization with the Nevada Secretary of State. (Doc. 57-1, page 4¹) On November 21, 2006, Avon Capital, LLC, a Connecticut limited liability company ("Avon Capital-CT"), filed articles of organization with the Connecticut Secretary of State. (Doc. 57-2, page 1) On May 18, 2007, Avon Capital-WY filed articles of organization with the Wyoming Secretary of State. (Doc. 57-6, page 1) On December 30, 2009, Avon Capital-WY was assigned 100% of the membership interests in SDM Holdings, LLC ("SDM"), an Oklahoma limited liability company. (Doc. 57-4, pages 1-4)

16. None of the motions, subpoenas, or other papers filed by Universitas Education prior to Avon Capital-WY's motion to intervene acknowledged that Avon Capital-CT, Avon Capital-NV, and Avon Capital-WY are distinct legal entities. And in its recent order, the Court found that "the submissions in this case do not clearly support Universitas's position that the judgment applies to all three [Avon Capital] LLC's." (Doc. 92, p.6). In other words, Universitas Education has not shown that Avon Capital-

¹Pursuant to Federal Rule of Evidence 201, this Court may take judicial notice of documents filed in other actions. *United States v. Pursley*, 577 F.3d 1204, 1214 n.6 (10th Cir. 2009). The Court may also take judicial notice of facts that are a matter of public record. *Van Woudenberg v. Gibson*, 211 F.3d 560 (10th Cir. 2000). Courts routinely take judicial notice of public documents filed with a secretary of state's office. *JP Morgan Trust Co., Nat'l Ass'n v. Mid-Am. Pipeline Co.*, 413 F. Supp.2d 1244, 1258 (D. Kan. 2006).

WY is a judgment debtor in this case. Rather, it has attempted to treat three distinct legal entities as interchangeable for the purpose of executing its judgment. This is inappropriate. Because of Universitas Education's failure to inform this Court of the name of the proper judgment debtor, none of the subpoenas or orders issued in this ancillary proceeding prior to Avon Capital-WY's motion to intervene adequately identified the judgment debtor. Moreover, Universitas Education never informed the Court which Avon Capital, LLC it was asking the Court to hold in contempt. (Doc. 40) For these reasons, it would be inappropriate to hold *any* entity – much less Avon Capital-WY in particular – in contempt.

17. The United States District Court for the Southern District of New York stated the “Turnover Respondents” (entities that became that became judgment debtors to Universitas Education) were all “entities formed in Delaware and Connecticut.” *Universitas Educ., LLC v. Nova Group, Inc.*, Nos. 11-cv-1590 and 11-cv-8726, 2014 U.S. Dist. LEXIS 109077, *22 (S.D.N.Y. Aug. 7, 2014). Avon Capital-WY was not formed in Connecticut or Delaware. Universitas Education cannot execute on Avon Capital-WY's assets before ever actually obtaining a judgment against Avon Capital-WY.

Respectfully submitted,

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**ATTORNEYS FOR INTERVENOR AVON
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CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2017 I electronically transmitted the attached document to the Court Clerk using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to all ECF registrants.

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s/ Lysbeth George

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